IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WP(C).No. 33190 of 2007(A)

PETITIONER:

SHAMSUDHEEN, AGED 26 YEARS,
S/O.KUNHEEVI, MOOCHIKKAL HOUSE,
THRIPRANGODE P.O., TIRUR, MALAPPURAM DISTRICT.

BY ADV. SRI.K.SHIBILI NAHA
SMT.A.LOWSY

RESPONDENTS:
----

1. THE DISTRICT COLLECTOR, MALAPPURAM-679325.

2. S.I. OF POLICE, TIRUR
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-676302.

3. STATE OF KERALA, REPRESENTED BY THE
SECRETARY DEPARTMENT OF REVENUE,
THIRUVANANTHAPURAM-695001.

BY GOVERNMENT PLEADER SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON 18/12/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
==========
W.P.(C) NO. 33190 OF 2007 A
==========

Dated this the 18th day of December, 2007

J U D G M E N T

In this writ petition, the petitioner challenges the validity of Ext.P2. Although several other reliefs have been sought, in the nature of the order that I propose to pass, I do not think it necessary to consider those contentions.

2. It is stated that the petitioner is the registered owner of a goods auto bearing Registration No.KL 55/3403. The vehicle was seized by the 2nd respondent on 3/6/07 alleging illegal transportation of river sand. Since the vehicle was not released to him, the petitioner moved the Judicial First Class Magistrate Court, Tirur, seeking its interim custody and on the dismissal of the said application, petitioner filed Criminal R.P.36/07 before the Additional Sessions Judge, Manjeri. In the Criminal R.P., Ext.P1 order dated 6/8/07 was passed directing reconsideration of the application filed before the Magistrate Court. Accordingly, it is stated that in pursuance thereof, the matter was reconsidered

and the vehicle was released on 17/10/2007.

3. Thereafter, the petitioner was issued notice by the 1st respondent and Ext.P2 is the order that has been passed. By this order, it is found that petitioner's vehicle was involved in the unauthorised transportation of river sand and on that basis, petitioner is directed to remit Rs.35,000/- towards the value of the vehicle and Rs.25,000/- towards fine. It is this order that is challenged by the petitioner.

4. A reading of the order shows that the 1st respondent has not considered any of the points urged by the petitioner to sustain his plea that he has not violated the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. In the second para of the order, it is stated that on hearing registered owner of the vehicle and going through the seizure mahazar, the 1st respondent has found that the vehicle was used for unauthorised transportation of river sand violating the provisions of the Act. In my view, the 1st respondent ought to have dealt with the contentions of the petitioner. It is his specific case that he had not transported any river sand and that at the time when it was seized, the vehicle was not loaded with river sand. Yet another complaint raised by the petitioner is that

he was not afforded an opportunity of hearing, which if correct, is also a vitiating factor. In view of the fact that the order does not deal with the contentions raised by the petitioner, I have to hold that the matter requires to be reconsidered as the order now passed is one vitiated for non application of mind.

5. Accordingly, Ext.P2 order will stand set aside and the 1st respondent shall issue notice to the petitioner, hear him and pass fresh orders adverting to the contentions raised. I clarify that I have not pronounced on the other contentions raised by the petitioner.

6. In the meantime, petitioner will continue to have custody of the vehicle on the terms as ordered in the Judicial First Class Magistrate, Tirur. It is directed that the 1st respondent shall complete the proceedings as above, as expeditiously as possible, at any rate within six weeks of production of a copy of this judgment.

Writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE.

Rp